

IN THE MATTER OF
EUCATHOL COMPANY, INC.¹

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3069. Complaint, Mar. 4, 1937—Decision, Nov. 3, 1937

Where a corporation engaged in manufacture and sale of "Eucathol," compound or medicine for use in treatment of coughs, colds, burns, sunburn, insect bites, hay fever, asthma, influenza, and other afflictions, and as after-shaving cream, through rubbing or massaging same on flesh or through inhalation of vapors thereof, in substantial competition with those engaged in sale or offer to general public of compounds, medicines, salves, and ointments used for purposes for which its said preparation was offered—

Represented, in advertising its said product in newspapers and periodicals of general circulation, and through radio broadcasts, and in pamphlets, and through printed testimonials, photographs, and pictures and legends on cartons containing said compound, and in circulars enclosed in cartons thereof, and through other advertising matter, that use of such "Eucathol" would prevent or cure, or was beneficial in treatment of, insect bites, sunburn, piles, hemorrhoids, asthma, hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, influenza, pneumonia, and other ailments, facts being said statements and representations as to the efficacy thereof in the treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia were each and all false and misleading;

With tendency and capacity to induce members of public and prospective purchasers to form mistaken and erroneous belief that said statements and representations were true, and with result that such purchasing public, acting on such erroneous belief, was induced to buy, and bought, its said products, and trade was thereby unfairly diverted to it from its said competitors; to the injury of competition in commerce among the States, and to the injury of the public:

Held, That such acts and practices in sale, offer and advertisement of aforesaid product as a preventive or cure, or as beneficial in treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia, were to the prejudice of the public and competitors and constituted unfair methods of competition in commerce.

Mr. E. J. Hornibrook for the Commission.

Stanard, Carey & Stanard, of Shawnee, Okla., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that The Euca-

¹ See original findings and order as of June 29, 1937, in this matter, at page 313, *supra*.

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thol Company, Inc., a corporation, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Eucathol Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located in the city of Shawnee, in said State. Respondent is now, and has been for several years last past, engaged at said location in the manufacture and sale of a compound for use in the treatment of coughs, colds, scalds, burns, sunburn, insect bites, hay fever, asthma, and other human afflictions. Said compound is also sold for use as an after shaving cream. Said compound is put up in containers and is to be applied by rubbing or massaging it onto the flesh, or by inhaling its vapors. Respondent has designated said compound as "Eucathol." Respondent sells said product to wholesale druggists who sell said product to retail druggists, and also direct to retail druggists. The retail druggists sell said product directly to the consumers thereof.

In the course and conduct of said business respondent ships, or causes to be shipped or transported, said product when so sold from the city of Shawnee in the State of Oklahoma to said wholesale and retail druggists, many of whom are located in points in various States other than the State of Oklahoma. There is now, and has been during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondent is now, and has been during all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling, or offering for sale, to the general public compounds, medicines, salves, and ointments and other remedies used for the purposes described in paragraph 1 hereof.

PAR. 3. In the course and conduct of the business as aforesaid, respondent, in soliciting the sale of and selling said products, has advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts, and in pamphlets, printed testimonials, and other printed matter. It has also made use of photographs, other pictures and legends on cartons containing said compound and in circulars inclosed in said cartons, and in other advertising media. In and through each and all of the advertising

media above enumerated, respondent has made, and is making, expressly or by implication, the following representations:

That the use of Eucathol will prevent and cure, or is beneficial in the treatment of: insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, flu and pneumonia, and other ailments.

PAR. 4. The representations described and set forth in paragraph 3 above are false and misleading, in that the use of Eucathol will not prevent and cure, and is not beneficial in the treatment of, insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, skin disorders, scalds and burns, flu and pneumonia, or other ailments or afflictions of the human body for which it is recommended by the respondent.

PAR. 5. Said statements and representations set forth in paragraph 3 so made by respondent have, and have had, the tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true, and, acting in such erroneous belief, the said purchasing public has been induced to purchase, and has purchased, respondent's product, thereby unfairly diverting trade to respondent from its said competitors, to the injury of competition in commerce among and between the various States of the United States, and to the injury of the public.

PAR. 6. The above alleged acts and practices are each and all to the prejudice of the public, and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 4th day of March 1937, issued and served its complaint in this proceeding upon respondent, Eucathol Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer, the Commission, by order entered therein, granted respondent's motion for permission to withdraw said answer and substitute therefor an answer admitting all of the material allegations of the complaint to be true, and waiving the taking

of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission, having duly considered the same, made and entered its findings of facts and conclusion on the 29th day of June, A. D., 1937, and the Commission now being desirous of modifying its said findings, as is provided for under the provisions of said Act of Congress, makes this its modified findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Eucathol Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located in the city of Shawnee, in said State.

Respondent is now, and has been for several years last past, engaged at said location in the manufacture and sale of a compound, or medicine, for use in the treatment of coughs, colds, scalds, burns, sunburn, insect bites, hay fever, asthma, influenza and other human afflictions. Said compound is also sold for use as an after-shaving cream. Said compound is put up in containers and is to be applied by rubbing or massaging it on the flesh, or by inhaling its vapors. Respondent has designated the said compound as "Eucathol." Respondent sells said product direct to retail druggists and to wholesale druggists, who also sell the same to retail druggists. The said retail druggists sell said product directly to the consumer thereof.

In the course and conduct of said business respondent ships, or causes to be shipped or transported, said product, when so sold, from the city of Shawnee in the said State of Oklahoma, to said wholesale and retail druggists, many of whom are located at points in various States other than the State of Oklahoma. There is now, and has been, during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondent is now, and has been, during all of the times herein mentioned, engaged in substantial competition with various corporations, copartnerships, firms, and individuals, selling, or offering for sale to the general public, compounds, medicines, salves and ointments used for the purposes described in paragraph 1 hereof.

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PAR. 3. In the course and conduct of the business, as aforesaid, respondent, in soliciting the sale and selling said product has advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts, and in pamphlets, and by, in and through the use of printed testimonials and other printed matter, photographs, and other pictures and legends on cartons containing said compound, and in circulars enclosed in said cartons, and in and upon other advertising media. In and through each and all of the advertising media above enumerated respondent has made, expressly or by implication, the following representations:

That the use of "Eucathol" will prevent or cure, or is beneficial in the treatment of, insect bites, sunburn, piles, hemorrhoids, asthma, hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, influenza, pneumonia, and other ailments.

PAR. 4. The use of "Eucathol" will not prevent or cure, nor is its use beneficial in the treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu), or pneumonia, nor is its use beneficial in the treatment of other human ailments, except in cases of head colds and the coughs associated therewith and in afflictions wherein a counter-irritant is indicated.

PAR. 5. The said statements and representations as to the efficacy of "Eucathol" in the treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia are each and all false and misleading, and said statements so made by respondent with respect to such last-named afflictions have, and have had, a tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true, and, acting on such erroneous belief, the said purchasing public has been induced to purchase and has purchased respondent's said product, thereby unfairly diverting trade to respondent from its said competitors to the injury of competition in commerce among and between the various States of the United States and to the injury of the public.

CONCLUSION

The acts and practices of the respondent, Eucathol Company, Inc., a corporation, in selling, offering for sale, and advertising as aforesaid, the product "Eucathol" as a preventive or cure, or as beneficial in the treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia, are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to

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Order

create a Federal Trade Commission, to define its powers and duties, and for other purposes."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer filed herein, on the 1st day of May 1937, by respondent, admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission, on the 29th day of June, A. D., 1937, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and having issued its order to cease and desist on the said 29th day of June, A. D., 1937, and the Commission having on the 3rd day of November, A. D., 1937, modified its said findings of facts and conclusion, and now being desirous of modifying its order so as to conform with its said modified findings of facts and conclusion, and being advised in the premises,

It is ordered, That the said order to cease and desist be, and the same is hereby, modified to read as follows:

Respondent Eucathol Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of a pharmaceutical preparation now designated as "Eucathol" or in the sale and distribution of any other pharmaceutical preparation composed of substantially the same ingredients, whether sold under the name "Eucathol" or any other name, in interstate commerce or in the District of Columbia, forthwith cease and desist from:

Representing, directly or by implication, that said preparation will prevent or cure, or is beneficial in the treatment of, piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia, or any other ailments, conditions, and afflictions of the human body, provided, however, that respondent is not hereby prohibited from representing that said preparation may be beneficial in the treatment of head colds, and coughs associated therewith, or in the treatment of other conditions wherein a counter-irritant is indicated.

It is further ordered, That respondent shall, within 60 days after service upon it of this modified order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this modified order.

IN THE MATTER OF
GEORGE EARL McKEWEN, ET AL., DOING BUSINESS AS
HERBAL MEDICINE COMPANY AND NATEX COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3075. Complaint, Mar. 12, 1937—Decision, Nov. 3, 1937

Where partners engaged in distribution and sale of "Herb Doctor Compound" and "Nutex," medicinal preparations, compounded from practically the same ingredients and sold and distributed between and among the various States and in the District of Columbia for substantially same use and conditions, in substantial competition with those likewise engaged in distribution and sale in commerce as aforesaid, of medicinal preparations, and including among its competitors many who distribute and sell preparations designed, intended and sold as aids or adjuncts in the treatment of the same or similar conditions and who do not in any way misrepresent the effectiveness of their respective products—

Represented, directly or through implication, in their advertising in newspapers of general interstate circulation and by circulars and pamphlets sent by mail into the various States, and by radio, that said preparations were new remedies and that they constituted competent and effective cures, remedies, or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, headaches due to constipation, general run-down condition, indigestion, constipation, dizziness, gastritis, colds, biliousness and similar maladies, ailments and conditions of the human body, facts being they were not new remedies and did not constitute competent cures, remedies or treatments for any of the ills, maladies and conditions named, or for any other similar ailments and maladies, and representations made by them with respect to the nature of their products, their therapeutic value and effectiveness in use, were grossly exaggerated, false, misleading, and untrue;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and that results claimed by them would be obtained by purchaser users of such products, and with result that substantial number of the consuming public, as a true consequence of the mistaken and erroneous beliefs induced by their said acts, advertisements, and representations, purchased substantial volume of their preparations, and trade in such commerce was unfairly diverted to them from those engaged in the distribution and sale of products intended for similar usage, and who truthfully advertise their respective products; to the substantial injury of competitors in commerce;

Held, That such acts, practices and representations were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Wm. T. Chantland for the Commission.

Mr. Clinton Robb, of Washington, D. C., for respondents.